

EXHIBIT A

1 reporter.

2 A. I can do that.

3 Q. If for any reason you don't hear me, you
4 can ask me to repeat the question so that you can
5 hear it.

6 A. I will.

7 Q. If you have any problem understanding my
8 question, you will ask for clarification if needed?

9 A. Sure.

10 Q. Is there any reason why you can't provide
11 full and truthful testimony today?

12 A. No.

13 Q. You are not on any medication of any sort
14 that would impair your memory in any way?

15 A. I am not.

16 (Recess.)

17 BY MS. QUINN-BARABANOV:

18 Q. Mr. McCormick, would you describe your
19 educational background for me?

20 A. Sure. I -- I am a lawyer, and I am also a
21 CPA.

22 Q. When did you receive your law degree?

1 BY MS. QUINN-BARABANOV:

2 Q. Going back to this document, Exhibit
3 Number 1, what is this document?

4 MR. BODOFF: Objection. You can answer.

5 THE WITNESS: This is a document that was
6 prepared by Maury Zanoft and Joe Donato from CBRE -
7 Melody, our investment bankers, in order to take the
8 Rodgers Forge project to market.

9 BY MS. QUINN-BARABANOV:

10 Q. So you recognize this document that has
11 been marked as Exhibit 1?

12 A. I do.

13 Q. CBRE Melody, their name is listed in the
14 bottom right corner; correct?

15 A. Correct.

16 Q. You mentioned someone named Maury Zanoft,
17 who is he?

18 A. Maury Zanoft is I believe director at CBRE
19 L.J. Melody.

20 Q. And CBRE L.J. Melody is a different
21 company than CBRE Realty Finance, which is under the
22 two projects we are going to discuss today?

1 A. Correct.

2 Q. That was your understanding?

3 A. Absolutely.

4 Q. You said this document was prepared for
5 the purpose of obtaining mortgage loan financing, is
6 that correct?

7 A. Correct.

8 Q. And did you review this document?

9 A. I did.

10 Q. And were the representations in this
11 document accurate, to the best of your knowledge,
12 when it was prepared?

13 A. Yes.

14 Q. And approximately when do you think this
15 document was prepared, as best can you tell based on
16 the document?

17 A. I would say sometime in the summer months
18 of 2005.

19 Q. So looking at the second paragraph, the
20 last sentence, do you see that?

21 A. Yes.

22 Q. Could you read that last sentence for me?

1 A. Early indications suggest that these
2 conversions are going to be highly successful.

3 Q. And these conversions is a reference to
4 what?

5 A. The Landing at Spa Creek and the Pavilion
6 Project.

7 Q. As of December '05, your expectation was
8 that the Rodgers Forge project was going to be highly
9 successful; is that right?

10 A. Yes.

11 Q. Was this document submitted to any
12 potential mortgage lenders?

13 A. Yes, I believe it was.

14 Q. Do you know which ones it was submitted
15 to?

16 A. Other than -- actually I don't know.
17 Specifically I don't recall but I mean I'm sure there
18 was a fairly significant list. I don't know.

19 Q. Do you believe it was submitted to CBRE?

20 A. I believe so.

21 MS. QUINN-BARABANOV: I am asking Miss
22 Reporter to mark Exhibit 2.

1 Q. We will come back to that later. Did
2 Mr. Zanoﬀ provide services in connection with the
3 Pavilion project?

4 A. He did.

5 Q. What were the services that he provided?

6 A. He sourced senior and mezzanine debt.

7 Q. And who did Mr. Zanoﬀ represent in the
8 Montrose transaction?

9 A. He represented Montrose Investment
10 Holdings.

11 Q. Did he also represent Triton?

12 A. Triton -- Jennifer, Triton was a -- it was
13 really a cost center where we had administration
14 work, CEO, General Counsel, CFO, those types of
15 people. And Triton Real Estate Partners itself did
16 not own anything.

17 Q. Other than Montrose, did Mr. Zanoﬀ
18 represent any other party to the Montrose
19 transaction?

20 A. I don't --

21 MR. BODOFF: Objection.

22 THE WITNESS: I don't think so, Jennifer.

1 It obviously was signed by Triton Real Estate
2 Partners, the engagement agreement but it was for
3 work to be done on behalf of Montrose.

4 BY MS. QUINN-BARABANOV:

5 Q. So to the best of your knowledge, there is
6 no other retainer agreement related to the Montrose
7 transaction involving Mr. Zanoft?

8 A. I don't believe so.

9 Q. And did Mr. Zanoft represent Triton in
10 connection with the Rogers Sports transaction?

11 A. Yes, he did.

12 Q. Was that memorialized in the retention
13 agreement?

14 A. It likely was.

15 Q. Are you -- I don't believe that has been
16 produced to us. Would you undertake -- did you look
17 for that document?

18 A. We looked for every document.

19 Q. Would you just go back and look for that,
20 if you would?

21 A. Sure.

22 Q. Because that has not been produced to us.

1 Okay. Let's go back to Exhibit 1 for a
2 moment. I want to go back to the biographical
3 information. You mentioned you were the CEO of
4 Evergreen -- well, let's actually go back to the
5 first page. In the third paragraph there is a
6 sentence there that says Mr. McCormick brings a
7 wealth of operating experience to Triton, having
8 created, managed and sold two substantial operating
9 companies, including a real estate development
10 business. Do you see that?

11 A. I do.

12 Q. What are the two companies you are
13 referring to there?

14 A. It would be Evergreen and U.S. Mobile
15 Service.

16 Q. Evergreen was the real estate development
17 group?

18 A. Correct.

19 Q. Going to the next page. You describe
20 Evergreen as one of the nation's largest developers
21 of affordable housing. What was the basis of that
22 statement?

1 A. We were during that point in time a
2 large -- very large developer, under what was then
3 the FMHA 502 housing program.

4 Q. Were you largest in terms of value or
5 number of units? What was the metric you were using?

6 A. Number of units.

7 Q. And in the chart laid out in the middle of
8 the page, you provide the price range for the units
9 developed under various projects. And the number of
10 units. Are those all -- described as a partial list
11 in the document. About what percentage of the
12 developments handled by Evergreen during your time
13 there are identified in this chart?

14 A. You know, Jennifer, I don't recall. I
15 think the reason it is a partial list is because in
16 2005, I couldn't recall back to the late '80s or
17 early '90s.

18 Q. Okay. But based on this list that you
19 provided, what was the approximate value of the
20 housing you developed while at Evergreen? Do you
21 have a sense on order of magnitude?

22 MR. BODOFF: If you know.

1 THE WITNESS: I could do the math, but I
2 don't recall.

3 BY MS. QUINN-BARABANOV:

4 Q. I did the math and I will represent to you
5 that using the low end of the range times the number
6 of units and adding it up, it's about more than
7 \$150 million. Does that sound about right?

8 A. Sure.

9 Q. And you were also involved, in the time
10 frame of this litigation you were involved in the
11 Rodgers Forge project, correct?

12 A. Correct.

13 Q. And what was the value of that project?

14 A. The sell-out value of the project?

15 Q. No, at the time it was financed?

16 A. There were several values, so I think that
17 you have to be more specific in terms of which value.

18 Q. I'm talking about at the beginning when
19 you got that transaction financed. The amount of
20 capital that was paid in and the amount of financing
21 that you received; how much was that?

22 A. I don't remember off the top of my head.

1 Q. Would it be somewhere in the neighborhood
2 of \$60 million; is that right?

3 A. It could be yes.

4 Q. What about Pavilion using the same
5 criteria? What was the approximate value of that
6 project?

7 A. I think it was about 140 million.

8 Q. You were also involved in a project called
9 The Landing at Spa Creek, correct?

10 A. Correct.

11 Q. What was the value of that project?

12 A. I think it was somewhere in the
13 neighborhood of 50 million.

14 Q. In connection with all of those
15 transactions, you obtained some sort of financing; is
16 that right?

17 A. Correct.

18 Q. And that financing was documented in the
19 loan documents?

20 A. It was.

21 Q. In the next paragraph you mentioned that
22 you sold U.S. Mobile for a substantial profit to

1 investors. What was the value of U.S. Mobile at the
2 time of the sale?

3 A. I think that the value was approximately
4 \$30 million.

5 Q. And that transaction, that sale was also
6 memorialized in some sort of contract document?

7 A. Yes.

8 Q. You also in the next paragraph mention a
9 sale -- the acquisition, I'm sorry. You mention the
10 acquisition of 300 million in data center assets from
11 Sprint; do you see that?

12 A. Yes.

13 Q. That transaction was also memorialized in
14 some sort of contract?

15 A. Yes.

16 Q. And the same would be true for the
17 \$200 million data center assets required from Palo
18 Alto Internet Exchange?

19 A. Correct.

20 Q. And the acquisition and sale of the
21 Marietta building referenced in the last sentence?

22 A. Correct.

1 Q. And in connection with those data center
2 assets did you obtain some sort of financing for
3 those acquisitions?

4 A. Yes.

5 Q. And that financing was memorialized in
6 loan documents?

7 A. It was.

8 (McCormick Exhibit No. 3 was
9 marked for identification.)

10 BY MS. QUINN-BARABANOV:

11 Q. Mr. McCormick, I'm showing you a document,
12 an e-mail from Francis McCormick to you and John
13 Moore and someone named David Walden on June 13th.
14 It has two attachments. One relates to the Pavilion
15 project and the second relates to the Rodgers Forge
16 project. Do you recognize this document, Exhibit 3?

17 A. I do.

18 Q. What is it?

19 A. This is a document that we would have
20 provided to a financial institution that was
21 potentially interested in financing, in this case the
22 Pavilion and Rodgers Forge projects.

1 Q. Was this document provided to CBRE?

2 A. I don't know.

3 Q. Who prepared this document?

4 A. This would have been a document that was
5 prepared by the people in my office, me included.

6 Q. So you would have reviewed this document?

7 A. I probably would have written quite a bit
8 of it.

9 Q. And to the best of your knowledge it would
10 have been accurate as of the time it was sent on
11 May 13, 2005?

12 A. Yes.

13 Q. And going back to the document number 1 --
14 the L.J. Melody document. Did you review that
15 document before it was circulated?

16 A. I don't recall but I'm sure that I did.

17 Q. I want to go back to the issue of the
18 corporate structures that were involved. I want to
19 start with the Rodgers Forge transaction and I just
20 want to ask you about the structure of the different
21 entities that were involved in the transaction. So
22 you mentioned Triton Real Estate Partners, correct?

1 A. Correct.

2 Q. What was the business of that entity?

3 A. Triton Real Estate Partners?

4 Q. Correct.

5 A. I thought we already discussed that.

6 Q. You said it was a management company?

7 A. Correct.

8 Q. And it provided services?

9 A. Correct.

10 Q. And who did it provide services to?

11 A. To either Bellona Holdings, Primrose
12 Holdings or to Montrose Holdings.

13 Q. Those were all companies that you were
14 involved with in some way?

15 A. Yes.

16 Q. Were there other entities, for example,
17 Pavilion, Triton Pavilion?

18 A. Sure. The holding entities as well as
19 the -- as well as the sub-entities underneath the
20 holding entities.

21 Q. And what were the entities underneath, I
22 just want to know, what the list was.

1 A. I haven't looked recently, but there
2 was -- you know, always a hold co. There was an
3 intermediate holding company which is typically what
4 we would refer to as the developer, and then there
5 was the fee owner, which is the owner -- the owner
6 typically of, obviously of the property.

7 Q. And what was your involvement at the
8 various levels of those -- of that structure?

9 A. Well, the hold co. would own 100 percent
10 of the developer, and then the developer would
11 typically own 100 percent of the entity that was the
12 owner of the fee.

13 Q. Were you a member of each of those
14 entities?

15 A. No, I was a member of hold co. You then
16 have the holding company that was the -- I believe --
17 the sole member of the development entity. Then you
18 would have the development entity as the sole member
19 of the entity that was holding the fee.

20 Q. So Triton Real Estate Partners just to
21 make sure I am clear, did not hold any assets.

22 A. Correct.

1 back and forth at that time. Okay.

2 Q. You can read back the question.

3 THE REPORTER: "Question: So is it your
4 understanding that the loan agreement reads in
5 April 2006, Rodgers Forge required current payment of
6 some portion of the interest?"

7 THE WITNESS:

8 A. Correct.

9 BY MS. QUINN-BARABANOV:

10 Q. Let's go to page 22.

11 A. Jennifer, maybe I can clarify? I don't
12 know if I should or not, but you asked me to read
13 language from a promissory note dated October 31, and
14 then just had me read information or verbiage from
15 the loan agreement dated April 14.

16 Q. I think that's on the record.

17 A. Okay.

18 Q. Let's go to page 22. I want to direct
19 your attention to section 9.19. And that refers to
20 senior loan documents. Do you see that?

21 A. Yes.

22 Q. Who was the senior lender on the Rodgers

1 Forge project?

2 A. Ohio Savings Bank.

3 Q. And under the terms of the Rodgers Forge
4 loan from CBRE, Triton was obligated not to itself or
5 allow Rodgers Forge apartments to breach the senior
6 loan; is that right?

7 MR. BODOFF: Objection. Your
8 understanding. Only answer as to your understanding.

9 THE WITNESS: I believe that a -- I
10 believed, and do believe that a default under the
11 senior loan could affect -- trigger a default under
12 the mezzanine loan.

13 BY MS. QUINN-BARABANOV:

14 Q. So it was your understanding that a
15 default on the senior loan would trigger a default
16 under the CBRE loan, correct?

17 A. Correct.

18 (McCormick Exhibit No. 11 was
19 marked for identification.)

20 BY MS. QUINN-BARABANOV:

21 Q. All right. I am showing you Exhibit 11,
22 it's a January 17 letter from Naka, Huttar &

1 A. Yes, I do.

2 Q. And attached to this document are the two
3 January 17th default notices that we just discussed,
4 is that correct?

5 A. That is correct.

6 Q. Let me direct your attention to the last
7 paragraph of this letter. The last sentence of the
8 last paragraph on the first page, do you see that?
9 The junior lender has five days from the effective
10 date of this notice to cure the defaults? Do you see
11 that?

12 A. Yes, I see that.

13 Q. What was your understanding of how CBRE
14 could cure the defaults identified by Ohio Savings
15 Bank?

16 MR. BODOFF: Objection. His first stated
17 that he wasn't sure that there were defaults.

18 BY MS. QUINN-BARABANOV:

19 Q. Let me ask this question, was it your
20 understanding that as of January 17, 2007, there had
21 been any defaults of any kind under the Ohio Savings
22 Bank loan?

1 A. Yes.

2 Q. So which specific defaults had occurred by
3 that date?

4 A. We had at least certainly paid interest,
5 not on a timely basis.

6 Q. Okay. So going back again to this last
7 paragraph on Exhibit 13, what was your understanding
8 of how CBRE could cure the defaults that had been
9 identified by Ohio Savings Bank?

10 MR. BODOFF: Objection, he said the
11 defaults were he did not pay on a timely basis, so
12 that assumes that there were still payments
13 outstanding.

14 BY MS. QUINN-BARABANOV:

15 Q. You can answer the question?

16 A. CBRE had the right to step in and make
17 protective advances to Ohio Savings Bank.

18 Q. What do you mean by protective advances?

19 A. Pay money to Ohio Savings Bank in order to
20 protect its security position.

21 Q. And that's the money that would have
22 otherwise been owed by Triton, correct?

1 A. To the extent it wasn't paid, yes.

2 Q. And to your knowledge did CBRE make the
3 payments identified in this January 17th letter?

4 A. I believe that they did.

5 Q. Before CBRE made those payments, did
6 Triton contest in any way that those payments in fact
7 were not owed?

8 A. I don't believe so.

9 Q. And the delinquencies identified in this
10 January 17th letter totaled more than a million
11 dollar, right?

12 MR. BODOFF: Objection.

13 THE WITNESS: Jennifer, does it say that
14 some place? I don't recall the amounts.

15 BY MS. QUINN-BARABANOV:

16 Q. If you go back to the two previous
17 exhibits, 11 and 12, 12 references a \$1,500 and 11
18 references \$1,046,000 and change. So is that more
19 than a million dollars Ohio Savings Bank believed was
20 due as of January 17, 2007?

21 A. Correct.

22 Q. And it's your understanding that those

1 amounts were paid by CBRE?

2 A. Correct. Or at least a portion of those
3 amounts were paid.

4 MR. BODOFF: Only if you know.

5 THE WITNESS: I don't know what portion.

6 MS. QUINN-BARABANOV: I asked for his
7 understanding, Joe.

8 MR. BODOFF: But I don't want him to
9 guess.

10 MS. QUINN-BARABANOV: You can't coach your
11 witness, okay?

12 MR. BODOFF: I understand.

13 MS. QUINN-BARABANOV: That was the
14 question and you can't coach your witness, and I'm
15 going to put a stop to this, okay?

16 (McCormick Exhibit No. 14 was
17 marked for identification.)

18 BY MS. QUINN-BARABANOV:

19 Q. Mr. McCormick, I'm showing you what has
20 been marked as Exhibit 14. It appears to be a
21 February 1, 2007 from CBRE to Triton Rodgers Forge.
22 Do you recognize this document?

1 A. I do.

2 Q. And it's a notice of acceleration,
3 correct?

4 A. That is correct.

5 Q. Related to the CBRE loan from Rodgers
6 Forge, right?

7 A. That is correct.

8 Q. And the reason that CBRE or you provided
9 for accelerating the amount under the loan were
10 defaults under the senior loan from Ohio Savings
11 Bank, right?

12 MR. BODOFF: Objection. You asked him to
13 restate or repeat what the letter says.

14 BY MS. QUINN-BARABANOV:

15 Q. Your understanding was that CBRE
16 accelerated the amounts due under its loan because of
17 a default to Ohio Savings Bank, right?

18 MR. BODOFF: Objection.

19 THE WITNESS: Correct.

20 BY MS. QUINN-BARABANOV:

21 Q. As of February 1, 2007, were you aware of
22 any defaults of any kind under the Ohio Savings Bank

1 loan?

2 A. I believe the answer to that is yes,
3 although I can't specifically tell you what they
4 were.

5 Q. Did Triton ever have any communications
6 with CBRE about the factual representations made by
7 Ohio Savings Bank in its notices of default?

8 A. I'm sure that we did. We had many
9 conversations with CBRE. I was in Hartford on
10 several different occasions, but I don't recall
11 specific conversations about that.

12 Q. So you don't recall any conversations
13 where you told -- you or anyone else acting on behalf
14 of Triton told CBRE that Ohio Savings Bank's reasons
15 in its notices of default were incorrect?

16 A. I don't believe so.

17 (McCormick Exhibit No. 15 was
18 marked for identification.)

19 BY MS. QUINN-BARABANOV:

20 Q. Mr. McCormick, I'm showing you what has
21 been marked as Exhibit 15. Do you recognize this
22 document?

1 CBRE improperly declared a default under
2 the Rodgers Forge loan documents due to a perceived
3 technical default by Triton Rodgers Forge LLC with
4 its senior lender, Ohio Savings Bank. Do you see
5 that?

6 A. I do.

7 Q. Could you explain to me what you mean by a
8 perceived technical default?

9 MR. BODOFF: To the extent of your
10 understanding.

11 MS. QUINN-BARABANOV: These are his
12 responses, Joe.

13 MR. BODOFF: The responses to
14 interrogatories may have been in part based on advice
15 and statements of counsel. So to the extent that
16 they reflect conversations that he and I had, he
17 should not answer those.

18 MS. QUINN-BARABANOV: Could you read the
19 question back?

20 THE REPORTER: "Question: Could you
21 explain to me what you mean by a perceived technical
22 default?"

1 THE WITNESS: I guess as I view this, this
2 would be -- perceived technical default is probably a
3 bad choice of words.

4 BY MS. QUINN-BARABANOV:

5 Q. Why?

6 A. I think that the more appropriate wording
7 would have been an unnecessary default.

8 Q. An unnecessary default to whom, to CBRE or
9 to Ohio Savings Bank?

10 A. CBRE defaulting Triton.

11 Q. What do you mean by unnecessary?

12 A. CBRE had its interest being paid via its
13 interest reserve. We were in advanced discussions
14 with a new investor, and we had a good relationship
15 with Ohio Savings Bank.

16 Q. Let me ask you this. So you are not
17 disputing that there was a default under the terms of
18 the Ohio Savings Bank loan; is that right?

19 A. I would say that, yeah, to some extent.

20 Q. And you are also not disputing that there
21 was a default then under the terms of the CBRE loan?

22 MR. BODOFF: Objection.

1 BY MS. QUINN-BARABANOV:

2 Q. Right?

3 A. That is right.

4 Q. What is your understanding of what the
5 consequences would have been if -- the consequences
6 of a default to Ohio Savings Bank for CBRE?

7 A. One more time, Jennifer.

8 Q. What would the consequences have been for
9 CBRE if you had defaulted on the Ohio Savings Bank
10 loan?

11 A. CBRE could make protective advances, and
12 to the extent that they didn't, Ohio Savings Bank
13 could foreclose out our interest in the property.

14 Q. And what was your understanding of what
15 the impact would have been on CBRE's interest?

16 A. They would have likely lost their
17 investment.

18 Q. Are you standing by the statement in this
19 interrogatory then when it says in the fifth line
20 down, CBRE improperly closed on the Rodgers Forge
21 project premised on false pretenses?

22 A. CBRE -- CBRE foreclosed in my opinion in

1 order to hold our feet to the fire with respect to
2 Monterey. They didn't need to foreclose.

3 Q. All right. I want to go back to the loan
4 agreement for a second, which was number 4. And I
5 want to go to section 3.2 which is on page 6.

6 There is a definition of a loan document
7 there. Do you see in section 3.2? It's on page 6.

8 A. I do.

9 Q. So for the purposes of this discussion, I
10 want to use that, when I say loan documents, that's
11 what I mean and I'm referring to Rodgers Forge. So
12 you are not alleging that CBRE failed to perform any
13 of its obligations under the loan documents; is that
14 correct?

15 MR. BODOFF: Objection.

16 BY MS. QUINN-BARABANOV:

17 Q. For Rodgers Forge?

18 A. I agree with that.

19 Q. And you are not contending that CBRE
20 entered into any oral agreements that were not
21 honored in connection with Rodgers Forge; is that
22 correct?

1 MR. BODOFF: Objection.

2 THE WITNESS: I believe so.

3 BY MS. QUINN-BARABANOV:

4 Q. You ARE not contending that CBRE made any
5 misrepresentation that induced any party to enter
6 into any of the loan documents for Rodgers Forge; is
7 that right?

8 MR. BODOFF: Objection.

9 THE WITNESS: That's correct.

10 BY MS. QUINN-BARABANOV:

11 Q. And you are not claiming that any of the
12 Rodgers Forge loans documents were entered into under
13 duress; is that correct?

14 MR. BODOFF: Objection.

15 THE WITNESS: They were entered into at a
16 time when we absolutely had to get a deal done.

17 BY MS. QUINN-BARABANOV:

18 Q. And by "had to get a deal done," what do
19 you mean by that?

20 A. We would have lost substantial deposits
21 had we not closed on the transaction.

22 Q. Deposits to who?

1 A. It was not.

2 Q. I want to go back for one second to the
3 original promissory note, which is, I think, number
4 5 -- 6.

5 (McCormick Exhibit No. 17 was
6 marked for identification.)

7 BY MS. QUINN-BARABANOV:

8 Q. Do you recall our prior discussion about
9 paragraph 2, the interest?

10 A. Yes.

11 Q. And our discussion of a red line document
12 that appears to relate to that promissory note?

13 A. Yes.

14 Q. I am showing you now what has been marked
15 as Exhibit 17. It appears to be a copy of an
16 October 31, 2005, e-mail from Maury Zanoft to Lou
17 Tyminski and you. Do you see this document?

18 A. Yes.

19 Q. It is an e-mail string that appears to be
20 complete, except for the attachment that is
21 referenced in the bottom e-mail on page 2.

22 A. Yes.

1 Q. And other than the attachment this appears
2 to be complete, correct?

3 A. It is, yes.

4 Q. In the bottom e-mail on page 2, there is a
5 reference to a red line version. Do you see that?
6 Based on the information provided by Andrew, attached
7 is a red line version of the note incorporating the
8 new economic terms which Andrew discussed with Brian
9 this weekend, do you see that?

10 A. I do.

11 Q. So you did have discussions with Andrew
12 Manley concerning the terms of the note; is that
13 right?

14 A. I must have.

15 Q. Sitting here today you have no reason to
16 doubt that you had conversations with him about that?

17 A. No reason to doubt.

18 Q. And the next e-mail in the chain is from
19 Steve Tyminski to you? And Steve asks you in the
20 second sentence, "Please confirm that the new note
21 terms are accurate. (Change from an accrual to a
22 current pay on interest for the portion of the loan

1 being allocated to an interest reserve.) "

2 Do you see that?

3 A. I do.

4 Q. Is that your understanding of the status
5 of the drafting of the promissory note as of
6 October 31, 2005?

7 A. I think that is obviated by what Maury
8 wrote in his e-mail to Steve, myself, and others, you
9 know, 90 minutes later. So again, I believe that
10 that note, what's being said there is that Steve was
11 trying to confirm that the note terms are accurate,
12 that it's not going to be PIKed, it's going to be
13 paid on a current basis with an interest reserve
14 being set up and a portion of the loan being
15 allocated and a portion of that interest being
16 allocated, the interest reserve.

17 Q. And the issue of paying current interest
18 was specifically negotiated, correct?

19 MR. BODOFF: Objection.

20 THE WITNESS: Yes.

21 BY MS. QUINN-BARABANOV:

22 Q. Okay. Let's turn --

1 represented by counsel in the April 2007 time frame?

2 MR. BODOFF: Let me say -- when you say

3 "you" who are you referring to, him personally?

4 BY MS. QUINN-BARABANOV:

5 Q. Was Triton represented by counsel in the
6 April 2007 time frame?

7 A. I believe that Eddie started prior to that
8 time.

9 Q. Did you lodge any form of objection to
10 this judicial sale, in response to this notice of
11 judicial sale?

12 A. I don't believe so.

13 Q. You were aware, however, that it was
14 possible to contest the sale through various legal
15 processes?

16 A. Yes.

17 Q. Did you personally ever take any action to
18 contest this sale?

19 A. Jennifer, I don't believe so.

20 Q. And that judicial sale eventually went
21 through and was approved by the court, is that your
22 understanding?

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1 provide 2.1 roughly million dollars to CBRE as a
2 deposit?

3 A. Yes.

4 Q. Where was that \$2.1 million coming from?

5 A. From Unicorn.

6 Q. And Triton would fund, under section B, it
7 says that Triton would fund the OSB out of balance in
8 the amount of \$1.3 million. And by out of balance,
9 what did you mean?

10 A. I'm not sure if that was -- there are many
11 different out of balance references. I'm not sure
12 which one that referred to.

13 Q. What does the expression out of balance
14 mean?

15 A. That the construction typically, that the
16 construction was -- we were either spending more on
17 the construction or less on the construction. To be
18 in balance you would be on budget.

19 Q. And the issue with respect to Rodgers
20 Forge was that you were spending more on
21 construction, correct?

22 A. That was one of the issues, yeah.

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1 Q. Are term sheets in your understanding
2 binding?

3 A. No.

4 Q. As of August 8, 2005, it looks like you
5 were in the process of exchanging comments on a term
6 sheet with CBRE; is that correct?

7 A. I believe that this was sent to CBRE for
8 its review. I don't know that we received any
9 comments back from CBRE.

10 Q. But you provided -- Mr. Zanoft, acting on
11 your behalf, provided this proposed term sheet to
12 CBRE; is that right?

13 A. Correct.

14 Q. And it reflected the state of your
15 discussions as of August 9, 2005?

16 MR. BODOFF: Objection.

17 THE WITNESS: It -- it -- provided the
18 starting line, if you will, for our discussions with
19 CBRE.

20 BY MS. QUINN-BARABANOV:

21 Q. Are you aware of any term sheets that were
22 exchanged by the parties before August 9, 2005?

1 A. I'm not certain.

2 Q. As you sit here today, do you recall any
3 term sheets being exchanged before August 9, 2005?

4 A. I just don't know.

5 Q. Do you recall when discussions between
6 CBRE and Montrose, Triton -- I use them
7 interchangeably -- began, concerning an investment in
8 the Pavilion project?

9 A. Likely during the summer of 2005.

10 Q. Do you believe it was substantially before
11 this August 9, 2005, e-mail?

12 A. I don't know.

13 Q. So, as you sit here today, you have no
14 specific recollection of conversations about CBRE
15 investing in Pavilion prior to August 2005?

16 A. Not specifically.

17 Q. Let's go to the terms -- and so Mr. Zanoft
18 was acting as your agent in connection with this
19 proposed loan, correct?

20 A. Correct.

21 Q. And was it his practice to forward these
22 term sheets to you as they were sent to him by CBRE?

1 A. He would have done so.

2 Q. But it's your understand that this term
3 sheet was generated by Montrose or Triton?

4 A. And/or Mr. Zanoft.

5 Q. And/or Mr. Zanoft. All right.

6 Let's go to the third page, the second
7 page of the actual term sheet.

8 The second page of the term sheet.

9 A. I'm sorry.

10 Q. There is a secured interest section. In
11 the second paragraph, the second sentence, it says
12 the CBRE commitment shall include an estimated
13 1.35 million in funds necessary to establish an
14 interest reserve for the purpose of maintaining
15 current payments of CBRE's base rate of interest. Do
16 you see that?

17 A. I do.

18 Q. So under the terms of this August 8
19 proposal, some of the interest on the CBRE loan would
20 be paid current, correct?

21 MR. BODOFF: Objection.

22 THE WITNESS: That is correct.

1 BY MS. QUINN-BARABANOV:

2 Q. The interest -- if you look down at the
3 two sections down on the chart, CBRE return and
4 minimum return, the second sentence refers to a 12
5 percent base rate of interest. So the 12 percent
6 interest was -- would be due on a monthly basis,
7 correct?

8 MR. BODOFF: Objection.

9 THE WITNESS: Can you please ask the
10 question one more time?

11 BY MS. QUINN-BARABANOV:

12 Q. Under the terms of this proposal, interest
13 accruing at 1 percent would be due currently,
14 correct?

15 MR. BODOFF: Objection.

16 THE WITNESS: Correct.

17 BY MS. QUINN-BARABANOV:

18 Q. And the remaining 8 percent interest would
19 accrue, right?

20 MR. BODOFF: Objection.

21 MR. ORTEGO: It's 6.

22 BY MS. QUINN-BARABANOV:

1 Q. I'm sorry the remaining 6 percent would
2 accrue, correct?

3 MR. BODOFF: Objection.

4 THE WITNESS: Under this proposal,
5 correct.

6 BY MS. QUINN-BARABANOV:

7 Q. And so under this proposal the plan was
8 that Triton or some affiliated entity would fund the
9 interest reserve; is that right?

10 MR. BODOFF: Objection.

11 THE WITNESS: The interest reserve was to
12 be funded by --

13 BY MS. QUINN-BARABANOV:

14 Q. Look at the second sentence.

15 A. -- CBRE.

16 Q. Look at second sentence of your e-mail.

17 It says please find out when CBRE expects us to fund
18 the 1.3 million. And 1.3 million is the amount of
19 the interest reserve, right?

20 A. That's correct.

21 Q. So under this August 9th proposal, the
22 plan was for Triton or some affiliated entity to fund

1 the interest reserve, correct?

2 A. Or a portion, yes.

3 Q. Well, based on this e-mail there is no
4 reference to any fund -- portion being funded by
5 CBRE, is there?

6 A. Part of CB's loan was to establish an
7 interest reserve. And a portion of the moneys that
8 we were to contribute to the project, which was about
9 6.1 million, a portion of those funds would go into
10 an interest reserve as well.

11 Q. Okay. Let's go to the last page of the
12 term sheet. The first paragraph. The first sentence
13 says this letter is non-binding and does not
14 constitute commitment to extend funds to the above
15 referenced project. So was it your understanding
16 that this August 8 term sheet was not a binding
17 commitment by CBRE?

18 MR. BODOFF: I assume it was signed by
19 CBRE?

20 MS. QUINN-BARABANOV: That's irrelevant to
21 my question.

22 MR. BODOFF: The thing is you said. I

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1 Q. Could you read that sentence for me?

2 A. "Any potential investment or loan made by
3 CBRE Realty Finance shall be evidenced only by
4 formal, written, fully-executed loan and/or other
5 agreements and other appropriate documents setting
6 forth these and other pertinent terms and conditions
7 between Sponsor and CBRE Realty Finance."

8 Q. Keep going.

9 A. "In the absence of formal executed
10 documentation neither CBRE nor Sponsor is intended to
11 or shall be bound by the terms and conditions
12 hereof."

13 Q. It was your understanding that the parties
14 intended that any final agreement reached would be
15 evidenced by a formal written agreement; is that
16 right?

17 MR. BODOFF: Objection.

18 THE WITNESS: That is correct.

19 BY MS. QUINN-BARABANOV:

20 Q. We talked about your discussions with
21 CBRE, I want to be sure I am clear. Are you aware of
22 any discussions by anyone else on behalf of Triton or

1 (McCormick Exhibit No. 29 was
2 marked for identification.)

3 BY MS. QUINN-BARABANOV:

4 Q. Mr. McCormick, I'm showing you what has
5 been marked as Exhibit 29. It's an August 19, 2005,
6 term sheet related to Pavilion. Do you recognize
7 this document?

8 A. I do.

9 Q. Does it appear to be a true and complete
10 copy of the August 19th, 2005, term sheet?

11 A. It does.

12 Q. This one was actually signed by both
13 parties, correct?

14 A. That's correct.

15 Q. Let me direct your attention to the second
16 page in the section of the chart entitled CBRE
17 Investment Structure, the second paragraph. Do you
18 see the CBRE commitment shall include an estimated
19 \$1,480,000 in funds necessary to establish an
20 interest reserve for the purpose of maintaining
21 current payments on CBRE's Base Rate of interest. Do
22 you see that?

1 A. Yes.

2 Q. So under this August 19, 2005, proposal,
3 some of the interest on the loan would be due
4 currently, correct?

5 MR. BODOFF: Objection.

6 BY MS. QUINN-BARABANOV:

7 Q. As referenced to current payment, correct?

8 A. Correct.

9 Q. And you understood it would require some
10 of the interest to be paid on a current basis?

11 A. Correct.

12 Q. If you look down at the section CBRE
13 Return and Minimum Return, it looks like 12 percent
14 is due on a current basis, right?

15 A. That is correct.

16 Q. And then an additional 8 percent would
17 accrue; is that correct?

18 A. That's correct.

19 Q. If you go back up to the prior column we
20 were looking at, CBRE Investment Structure, the third
21 paragraph. Could you read the second sentence for
22 me? "The funds necessary"?

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1 A. The funds necessary to maintain current
2 payment of CBRE Base Rate of interest shall be
3 provided in equal amounts, i.e., 50 percent each by
4 Sponsor to scheduled cash payments and CBRE through
5 its interest reserve.

6 Q. So under the August 19th proposal the plan
7 was for CBRE and Triton to split the current interest
8 that was due; is that right?

9 A. That is correct.

10 Q. And CBRE's portion would be funded from
11 the interest reserve, correct?

12 A. Through its interest reserve, correct.

13 Q. Where was Triton's portion going to come
14 from?

15 A. Under this proposal, it would have come
16 through -- or come from Triton.

17 Q. Would that have been your personal funds
18 through Triton that would have paid the current
19 interest?

20 A. If that's the way that the deal had
21 closed, then, yes.

22 Q. But that was not the way the deal closed,

1 Q. Does it appear to be a true and complete
2 copy of Mr. Zanoft's e-mail to you?

3 MR. BODOFF: The first page or the entire
4 string?

5 BY MS. QUINN-BARABANOV:

6 Q. The entire string.

7 A. The string does. Jennifer, I don't recall
8 the insert here, but the string does.

9 Q. Okay. Let's start about half way through,
10 on the second page there is an e-mail that carries
11 over from page 2 to page 3. It's from someone named
12 Jodi Gallivan. Do you see that?

13 A. Yes.

14 Q. Who is Jodi Gallivan?

15 A. Jodi was a loan officer at Fremont.

16 Q. And who is Fremont?

17 A. Fremont was a senior lender at the
18 Monterey project.

19 Q. And below her e-mail attaches a term sheet
20 from the proposed senior loan from Fremont, correct?

21 MR. BODOFF: Is that attached or included?

22 BY MS. QUINN-BARABANOV:

1 Maybe if you go to the top of the e-mail on that
2 page, does that refresh your recollection as to what
3 the expectation was? The top e-mail on the page?

4 A. Which page?

5 Q. The second page of this e-mail, the second
6 sentence?

7 A. Yes.

8 Q. There is an e-mail from you to Mr. Zanoft
9 that says "the term sheet -- three-month term sheet
10 does not include the CBRE interest reserve -- how
11 will we fund the current portion of the CBRE
12 interest?"

13 What was your plan as of October 12, 2005,
14 for funding the current portion of the CBRE interest?

15 A. We had no plan.

16 Q. Was it your hope that some of the Fremont
17 proceeds could be used to fund Triton's portion of
18 the CBRE interest?

19 A. To the extent that there would be current
20 CBRE interest, yes.

21 Q. Did you engage in any conversations with
22 Fremont as to whether they would allow the proceeds

1 of the loan -- let's go back --

2 The first e-mail on the page suggests that
3 Mr. Zanoft went back to Fremont to talk to them about
4 whether they would permit some of the loan proceeds
5 to be used to fund current interest payments to CBRE;
6 is that your understanding?

7 A. That's what it says here.

8 Q. Is it your understanding that he had those
9 conversations?

10 A. I believe he did.

11 Q. Did you have any conversations with
12 Fremont about that issue?

13 A. Not that I can recall.

14 Q. What was your understanding of the outcome
15 of Mr. Zanoft's discussions with Fremont about
16 whether loan proceeds could be used to pay current
17 interest to CBRE?

18 A. That they could not.

19 Q. But you asked?

20 A. Mr. Zanoft did.

21 (McCormick Exhibit No. 31 was
22 marked for identification.)

1 BY MS. QUINN-BARABANOV:

2 Q. Mr. McCormick, I'm showing you what has
3 been marked as Exhibit 31. It appears to be an
4 e-mail from Mr. Zanoft to you dated October 12th. Do
5 you recognize this document?

6 A. Yes.

7 Q. Does it appear to be a true and correct
8 copy of the October 12th e-mail?

9 MR. BODOFF: I just have a question here.
10 Maybe I'm looking at this wrong. It looks like two
11 different e-mails here dated October 12, with the
12 second e-mail starting at MC 13558. I may have it
13 wrong; I'm just looking at it now.

14 MS. QUINN-BARABANOV: All right. This is
15 the way it was produced to us, that it would seem to
16 be correct that you can't have a 152 e-mail attached
17 to a 136 e -- ail. So I agree with you about that.

18 MR. BODOFF: I am okay with it. I want to
19 clarify.

20 MS. QUINN-BARABANOV: Okay. So there are
21 two separate documents collectively marked as exhibit
22 -- treat it that way? Collectively marked as 30?

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1 MR. BODOFF: 31.

2 MS. QUINN-BARABANOV: 31.

3 MR. BODOFF: 31, yeah. As long as you
4 address them separately, I'm okay.

5 BY MS. QUINN-BARABANOV:

6 Q. Let's start with the first document which
7 appears to go from Bates stamp MC 11355 through MC
8 11357. Does that appear to be a true and complete
9 copy of an e-mail from Mr. Zanoft to you?

10 A. Yes.

11 Q. Looking at the e-mail at the top of the
12 second page, is that Fremont rejecting the idea of
13 using the proceeds of their loan to fund CBRE
14 interest reserve?

15 A. One more time, please, Jennifer.

16 Q. That e-mail at the top of that page, is
17 that -- did you understand that e-mail to be a
18 rejection by Fremont of the proposal to use their
19 loan proceeds to pay current CBRE interest?

20 A. Yes.

21 Q. And then Mr. Zanoft responds with an
22 e-mail that uses the term leakage. Can you explain

1 what that means? Your understanding?

2 A. That in this case that Fremont would allow
3 25 percent of their legal repayment to be paid over
4 to CBRE.

5 Q. Did you make that proposal to Fremont?

6 A. I didn't, but Maury apparently did.

7 Q. Do you have an understanding as to what
8 Fremont's response was?

9 A. I don't.

10 Q. Maybe we should go to the next document
11 which is the one that begins on 11358, and appears to
12 go through 11363.

13 That's an e-mail from Mr. Zanoft to you
14 also dated October 12th, but a little bit later. Do
15 you see that?

16 A. I do.

17 Q. Does that appear to be a true and complete
18 copy?

19 A. Yes.

20 Q. And looking at Mr. Zanoft's response,
21 Mr. Zanoft's e-mail, what does Fremont's response
22 appear to have been? What was your understanding of

1 Mr. Fremont's response?

2 A. That they will allow leakage after a
3 certain pre-sale level.

4 Q. Okay, so can you explain that in plain
5 English?

6 A. After 30 percent of the project has been
7 pre-sold, they would allow any repayment -- Fremont
8 would have allowed repayments from its loan to 25
9 percent of those repayments to be paid over to CBRE
10 in order to cover any interest expense accruing on
11 the loan as well as -- as well as principal paydown.

12 Q. Was it your understanding that under these
13 terms Triton would be able to cover CBRE's current
14 interest over the life of the CBRE loan?

15 A. I don't know that I can answer that
16 question.

17 Q. Was that what you were working towards
18 with these different options?

19 A. This is what we were modeling.

20 Q. And the purpose of the model was to come
21 to a result where you could cover the CBRE interest
22 through the life of the loan?

1 A. That would have been the best result, I'm
2 sure.

3 (McCormick Exhibit No. 32 was
4 marked for identification.)

5 BY MS. QUINN-BARABANOV:

6 Q. Mr. McCormick, I'm showing you what has
7 been marked as Exhibit 32, an e-mail from Mr. Zanoft
8 to you dated October 12th. Do you recognize it?

9 A. Yes.

10 Q. Does this appear to be a true and complete
11 copy of the October 12th e-mail?

12 A. Yes.

13 Q. Let's go to the second page, the second
14 e-mail in the string. Mr. Zanoft says let's think
15 about how much we want CBRE to fund of their return
16 versus the leakage. What did you understand him to
17 mean to that?

18 MR. BODOFF: By the way for the record I
19 think it's the third e-mail in this string.

20 MS. QUINN-BARABANOV: The second on that
21 page?

22 MR. BODOFF: Okay.

1 THE WITNESS: This was a reference to how
2 much we would like CB Realty Finance to fund of the
3 interest reserve versus relying on leakage from the
4 senior loan -- senior lender.

5 BY MS. QUINN-BARABANOV:

6 Q. And you asked Mr. Zanoft as to whether he
7 thought CBRE would be content with just leakage; is
8 that right?

9 A. Yes.

10 Q. And then Mr. Zanoft responded no, correct?

11 A. Correct.

12 Q. Then he goes on to say, maybe reserve it
13 for six or nine months and then get some leakage,
14 right? So is it fair to say that you were
15 considering different options in terms of the length
16 of time that you wanted CBRE's interest reserve to
17 cover the current interest payments that were due?

18 A. We were modeling different scenarios.

19 Q. And six to nine months was less than the
20 expected term of the CBRE loan, correct?

21 A. I believe that that's not correct. The --
22 I thought the first loan was for a very short stated

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1 period and the second loan was for a longer period.

2 Q. On Montrose?

3 A. I'm sorry, I'm thinking Rodgers Forge.

4 Q. That's what I'm asking, the six to nine

5 months was less than the expected term of the

6 Montrose loan from CBRE, right?

7 A. Correct.

8 Q. What was the expected term of the Montrose

9 loan at that point?

10 A. I don't recall.

11 Q. Was it something in the neighborhood of 30

12 or 36 months; does that sound right?

13 A. Likely, but I don't recall specifically.

14 Q. Your expectation is that after six to nine

15 months, you might be able to cover the current

16 interest due to CBRE from sales proceeds from the

17 project, is that right?

18 A. I think that was Maury's comment back to

19 me.

20 (McCormick Exhibit No. 33 was

21 marked for identification.)

22 BY MS. QUINN-BARABANOV:

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1 Q. I am showing you what has been marked as
2 Exhibit 33. It appears to be an e-mail from
3 Mr. Zanoft to you, Andrew Manley, dated October 19,
4 2005. And below it, there is e-mail from Mr. Waldman
5 to you apparently dated October 19. Do you recall
6 the second e-mail in the string, the one from
7 Mr. Waldman to you?

8 A. Yes.

9 Q. The e-mail references an attachment. Do
10 you have that attachment? A model that was prepared?

11 A. It would have been one of our financial
12 models.

13 Q. It was not produced in connection with
14 this e-mail. Do you know if you have it?

15 MR. BODOFF: I don't think we produced
16 this.

17 BY MS. QUINN-BARABANOV:

18 Q. That's correct, okay?

19 MR. BODOFF: And I would note on here that
20 it's not sent to any of the defendants or any of the
21 borrowers.

22 MS. QUINN-BARABANOV: I'm only asking him

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1 about the e-mail string in which he is the recipient,
2 the portion of the e-mail.

3 MR. BODOFF: I understand that, but then
4 you went back to the attachment.

5 MS. QUINN-BARABANOV: You are correct, it
6 dropped off somehow. Okay.

7 BY MS. QUINN-BARABANOV:

8 Q. So there is a reference there in the
9 middle of the paragraph there, the first paragraph of
10 the e-mail says, "added a second equity distribution
11 worksheet to show what the deal would look like with
12 CBRE funding its own interest reserves so that it can
13 receive current interest through the point where we
14 can begin repaying them from sales proceeds." Do you
15 remember what this model showed?

16 A. Not specifically, no.

17 Q. Do you recall approximately when you
18 expected that Triton would be able to repay CBRE from
19 sales proceeds?

20 A. No, I don't specifically recall.

21 (Recess.)

22 (Whereupon, at 12:50 p.m., the deposition

1 AFTERNOON SESSION

2 (1:46 p.m.)

3 Whereupon,

4 BRIAN MCCORMICK,

5 the witness testifying at the time of recess, having
6 been previously duly sworn, was further examined and
7 testified further as follows:

8 EXAMINATION BY COUNSEL FOR PLAINTIFF (RESUMED)

9 (McCormick Exhibit No. 34 was
10 marked for identification.)

11 BY MS. QUINN-BARABANOV:

12 Q. Mr. McCormick, I'm showing you what has
13 been marked as Exhibit 34. It is an e-mail from
14 Mr. Zanoft to Mr. Manley attaching another term sheet
15 as of October 28, 2005. Is that a fair
16 characterization of this document?

17 A. Geez, I believe so.

18 Q. I want to go to the first paragraph on the
19 second page of the term sheet, there is a column that
20 says CBRE investment structure. And the second
21 paragraph says, CBRE commitment shall include an
22 estimated \$3,700,000 in funds necessary to establish

1 an interest reserve for the purpose of maintaining
2 current payments of CBRE's base rate of interest as
3 defined below in CBRE return and minimum return.

4 So under this October 28th proposal, some
5 of the interest on the CBRE loan would be paid
6 currently, correct?

7 MR. BODOFF: Objection.

8 THE WITNESS: I believe that's correct.

9 BY MS. QUINN-BARABANOV:

10 Q. And looking at the section below that says
11 CBRE return and minimum return, the portion that
12 would be due on the current basis was the portion
13 that accrued at 8 percent; is that right?

14 MR. BODOFF: Objection.

15 THE WITNESS: That's correct.

16 BY MS. QUINN-BARABANOV:

17 Q. And going back up to that second paragraph
18 in the first section of the chart at the top of the
19 page, could you read for me starting with, two
20 sentences from the end of the second paragraph
21 "project cash flows," do you see that?

22 A. Yes.

1 Q. Can you read from there to the end of the
2 paragraph for me?

3 A. If project cash flows were insufficient to
4 fund the base return payment of the, base return
5 shall be made by CBRE through its interest reserve.
6 CBRE's base return shall be due and payable on a
7 monthly basis and shall be considered a project cost.

8 Q. So, as of October 28th, the understanding
9 was that if cash flows were insufficient to cover the
10 current interest, they would be paid from the
11 interest reserve, correct?

12 MR. BODOFF: Objection.

13 THE WITNESS: That's what this says, yes.

14 BY MS. QUINN-BARABANOV:

15 Q. Let's go to the last page. The first full
16 paragraph on that page. Do you see where it says,
17 "any potential investment or loans made by CBRE
18 Realty Finance shall be evidenced only by a formal
19 written fully executed loan and/or other loan
20 agreements or appropriate documents"? Do you see
21 that?

22 A. I do.

1 pay, do you see that?

2 A. Yes.

3 Q. Which CB is funding, it says?

4 A. Yes.

5 Q. Did you understand that as a reference to
6 the interest reserve?

7 A. I did.

8 MR. BODOFF: Object.

9 BY MS. QUINN-BARABANOV:

10 Q. And the reference to current pay, did you
11 understand that as to a reference to the payment of
12 current interest?

13 A. I did.

14 Q. Let's go back to the previous Exhibit,
15 number 38?

16 Okay. Then looking at Exhibit 38, do you
17 recognize this November 7, 2005, e-mail from
18 Mr. Zanoft to you?

19 A. Yes.

20 Q. Okay. And in the middle e-mail on that
21 page, you say that "Andrew specifically told me that
22 there was no interest reserve. Please confirm."

1 That's what you asked Mr. Zanoft?

2 A. Yes.

3 Q. And by Andrew, you are referring to whom?

4 A. Andrew Manley.

5 Q. And you are referring to a conversation
6 with Mr. Manley concerning the interest reserve,
7 correct?

8 A. That's correct.

9 Q. And what is the conversation that you were
10 referring to in this e-mail? When did it take place?

11 A. It took place sometime between the evening
12 of November 6th and 11:09 in the morning on Monday,
13 November 7.

14 Q. Who else participated in that
15 conversation, if anyone?

16 A. I don't recall. But the conversations
17 that we had been having throughout that entire time
18 period was that we did not want current pay interest
19 and we didn't want an interest reserve. Mr. Manley
20 always said that he would be up against CB Realty
21 Finance to waive the requirement for current interest
22 and interest reserve. And he again told me at this

1 time that there wouldn't be an interest reserve
2 because there was going to be no requirement for
3 current interest.

4 Q. Let's look at Mr. Zanoft's response to
5 you. Mr. Zanoft responded by saying, it was a 12
6 percent split 50/50 funding between you and CBRE, and
7 then he came down to 8 percent current funded by --
8 all by CBRE. Do you see that?

9 A. I do.

10 Q. So did you understand that Mr. Zanoft
11 believed as of November 7 that there was payment of
12 current interest required?

13 A. I believe that's the case, yeah.

14 (McCormick Exhibit No. 40 was
15 marked for identification.)

16 BY MS. QUINN-BARABANOV:

17 Q. Mr. McCormick, I'm showing you what
18 appears to be a November 7th e-mail from Mr. Zanoft
19 to you. Do you recognize this document?

20 A. Yes.

21 Q. And does it appear to be a true and
22 complete copy of Mr. Zanoft's November 7th e-mail to

1 you?

2 A. It does.

3 Q. Let's go to the third page of that e-mail.

4 At the bottom of the page, the last complete e-mail,
5 do you see that from you to Mr. Tyminski?

6 A. At the bottom of the third page.

7 Q. Yes, MC 11505?

8 A. Yes.

9 Q. The last e-mail is from you to?

10 MR. BODOFF: That is the one that goes to
11 11506?

12 BY MS. QUINN-BARABANOV:

13 Q. No, I'm just asking for the one that is
14 dated at 3:11:00 p.m. Do you see that?

15 A. Yes.

16 Q. You asked Mr. Zanoft to check on some
17 items relate to the current proposal, correct?

18 A. That's correct.

19 Q. And one of them related to the interest
20 reserve, right?

21 A. Correct.

22 Q. And you specifically asked if the interest

1 would be held in escrow, and if so, how, right?

2 A. That's correct.

3 Q. And Mr. Tyminski got back to you, right?

4 In the subsequent e-mail in this chain, correct?

5 A. It just seems odd that his e-mail is timed
6 before the one I sent to him.

7 Q. I think your computers were maybe not
8 perfectly synchronized.

9 MR. BODOFF: I object. No one knows why.

10 BY MS. QUINN-BARABANOV:

11 Q. The fact is that it is in your in-box and
12 it's from him and it is dated November 7th. Are you
13 suggesting that this document has been altered in any
14 way?

15 A. I don't think so.

16 Q. So Mr. Tyminski responds to your question,
17 correct?

18 MR. BODOFF: Objection. I think
19 especially in light of the fact that the time is off,
20 I think he is entitled to a non-leading question.

21 BY MS. QUINN-BARABANOV:

22 Q. You can answer.

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1 A. He answered my question.

2 Q. He addressed your question, is that a
3 better way to put it?

4 A. Yes.

5 Q. And said there was not escrow on interest
6 reserve, correct?

7 MR. BODOFF: Objection.

8 THE WITNESS: He says there is no real
9 escrow of the interest reserve. They would advance
10 as necessary.

11 BY MS. QUINN-BARABANOV:

12 Q. Okay. So under the terms of the
13 transaction being discussed on November 7th, there
14 were current interest payments required, correct?

15 MR. BODOFF: Objection.

16 THE WITNESS: At some point during the
17 course of the day on November 7th, that, I believe,
18 changed.

19 BY MS. QUINN-BARABANOV:

20 Q. As of about 3:00, the parties were still
21 discussing a transaction where current interest would
22 be owed, correct?

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1 MR. BODOFF: Objection.

2 THE WITNESS: That's true.

3 BY MS. QUINN-BARABANOV:

4 Q. Then looking, Mr. Zanoft weighs in. And
5 he asks the question, "I assume we have no
6 responsibility for the current return due to delays
7 regardless of reserve depletion," right?

8 What did you understand his reference to
9 the current return to mean?

10 A. The recurring interest paid to CBRE under
11 their facility.

12 Q. What kind of delay did you understand him
13 to be referring to?

14 A. I don't know. There could be any number
15 of delays. I'm not sure which one he is referring
16 to.

17 Q. Delays in terms of completion of the
18 project?

19 A. Possibly.

20 Q. Meaning fails or construction --

21 A. I don't know.

22 Q. You didn't have any understanding of what

1 he meant in terms of delay?

2 A. Not that I can recall.

3 Q. Okay. And going back to the second page,
4 you ask the question, what does happen if we exhaust
5 the reserve, do we have a continuing obligation to
6 fund current interest to CBRE?

7 You asked Mr. Zanoft that question, right?

8 A. I asked Steve Tyminski.

9 Q. Okay. And Mr. Zanoft is copied. Yes,
10 Mr. Tyminski. Why would you ask that question if it
11 was your understanding that no current interest was
12 required?

13 A. Well, I think as we just said there,
14 obviously the date November 7th was a very fluid day.
15 So I start off in the morning by sending an e-mail
16 that it's my understanding that no current interest
17 is required. And by the time the day comes to a
18 close, it looks like we've essentially agreed that
19 CBRE is going to fund an interest reserve and that
20 current interest will be required.

21 Q. And looking at Mr. Zanoft's e-mail at the
22 top of the page, as of November 7, the proposal would

1 have covered the interest reserve for 18 to 20 months
2 worth of interest, is that right?

3 MR. BODOFF: Objection.

4 THE WITNESS: Well, I think he's asking
5 the question of Mr. Manley. I wasn't a part of that
6 e-mail string.

7 BY MS. QUINN-BARABANOV:

8 Q. Was that your understanding of how much --
9 let me ask the question a different way.

10 The e-mail, two e-mails below there is a
11 reference to \$3.71 million?

12 A. 3.75 million, yeah.

13 Q. Your understanding is that refers to the
14 amount to be placed in the interest reserve as of
15 this point?

16 A. I believe so, yes.

17 Q. And what was your understanding of how
18 many months of current interest that was supposed to
19 cover?

20 A. I believe that they were trying to get to
21 a year and a half's worth of current interest.

22 Q. But that was less than the expected life

1 of the loan, correct?

2 A. Correct.

3 Q. Then going to the first page, Mr. Zanoft
4 sends Andrew Manley an e-mail and says, "and if
5 delayed for some reason, you just keep funding or
6 forego current, correct?"

7 MR. BODOFF: The correct doesn't have a
8 question mark as your reading implies.

9 BY MS. QUINN-BARABANOV:

10 Q. Then Mr. Zanoft sends another e-mail to
11 you at 3:36. That says "from Andrew." Did you
12 understand this e-mail to be based on a conversation
13 that Mr. Zanoft had with Mr. Manley?

14 A. I believe so. At this point, I can't tell
15 you whether the correct is Andrew's response to Maury
16 or not.

17 Q. Is there any e-mail on this page?

18 MR. BODOFF: Excuse me. I don't think he
19 finished answering. Did you finish?

20 THE WITNESS: No, I did not. I think
21 Mr. Zanoft asked the question, and I believe -- I
22 believe that Mr. Manley answered the question with,

1 correct. And then I'm sorry, you were asking a
2 question with regard to the first e-mail?

3 BY MS. QUINN-BARABANOV:

4 Q. I'm asking what is the basis for your
5 belief that the word correct came from Mr. Manley.
6 What is the basis for your belief that it came from
7 Mr. Manley?

8 A. I had conversations with both Maury Zanoft
9 and Andrew Manley specifically around that issue.

10 Q. Do you mean the word correct in terms of
11 being typed into this e-mail came from Mr. Manley, is
12 that what you are trying to say?

13 A. I think it might be, yes.

14 Q. Do you see any e-mail on this page after
15 the November 7, 2005, 3:30 e-mail where it was from
16 Mr. Manley where he could have inserted that text?

17 A. I don't see that, but I also don't know --
18 I don't know the answer to it. My understanding from
19 Maury and from -- I'm just surmising, but my
20 understanding from Maury and certainly from Andrew
21 that if -- as you can see at this 3:30 in the
22 afternoon, that if we ran out of interest reserve

1 that they would PIK their interest or replenish the
2 reserves -- I'm sorry, or forego current interest.

3 Q. What is the basis for your belief that
4 those letters that spell the word correct came
5 from -- were written by Mr. Manley?

6 A. I'm just saying that I am -- I am just
7 questioning whether those were written by Andrew
8 Manley. Maybe they weren't. It was just a point I
9 was making.

10 Q. But the 3:36 e-mail above, did you
11 understand Mr. Zanoft's e-mail to be based on a
12 conversation that he had with Mr. Manley?

13 A. I believe so, yes.

14 Q. Were you part that conversation?

15 A. No.

16 Q. And Mr. Zanoft reports from Andrew,
17 "either/or we will cross that bridge if we get
18 there." What did you understand -- based on that,
19 did you understand that Mr. Manley did not commit to
20 waive or replenish the interest reserve if there were
21 delays?

22 A. No.

1 Let's go back to your interrogatory
2 response.

3 MR. ORTEGO: Exhibit 15.

4 MR. BODOFF: Exhibit 16. 15 was the --

5 BY MS. QUINN-BARABANOV:

6 Q. Looking at the second paragraph. The
7 response to interrogatory number 4 is on page 8, the
8 second paragraph. Do you see that? In that second
9 paragraph, you refer to a November 1, 2005 term
10 sheet, right?

11 A. Yes.

12 Q. And you claim that that November 1, 2005,
13 term sheet prompted you to make some inquiries
14 concerning replenishment or waiver of the interest
15 reserve; is that right?

16 A. That is the claim.

17 Q. And as I understand it, the transaction or
18 the loan closed on November 8th; is that right?

19 A. I thought it was November 10th.

20 Q. Let's go back to the document -- it's
21 number 25, it says on the front page November 8, do
22 you have any reason to disagree with that?

1 MR. BODOFF: I'm not. The question is
2 misleading. I'm trying to explain to you why. I'm
3 trying to explain to you why I think it's misleading
4 because we don't know what number 2 is and everything
5 else flows from it.

6 BY MS. QUINN-BARABANOV:

7 Q. Let's stop right now. So on the first
8 e-mail on that page, Mr. Zanoft reports that Andrew
9 is standing his ground on this issue, correct?

10 A. That's what it says, yes.

11 Q. And so it was your understanding that in
12 response to inquiries from Mr. Zanoft, Mr. Manley
13 still refused to change the written loan documents to
14 provide for a waiver or replenishment of the interest
15 reserve if it became depleted, correct?

16 MR. BODOFF: Objection.

17 BY MS. QUINN-BARABANOV:

18 Q. Go ahead.

19 A. That's correct.

20 Q. If you had this agreement with Mr. Manley,
21 why wouldn't he agree to change the written loan
22 terms to reflect the agreement?

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1 hook if some delays for your current return." Right,
2 that's what Mr. Zanoft asked Mr. Manley, right?

3 A. That's what it looks like.

4 Q. And Mr. Manley's response was "we will
5 consider options." Right?

6 A. That's what it says.

7 Q. So it's your understanding that in this
8 conversation, at least CBRE did not consent to a
9 deferral of interest if there were delays?

10 MR. BODOFF: Objection. He is not even
11 part of the conversation.

12 BY MS. QUINN-BARABANOV:

13 Q. Let me rephrase it this way. Did
14 Mr. Zanoft communicate with you -- do you remember
15 having any discussions with Mr. Zanoft about this
16 e-mail exchange with Mr. Manley?

17 A. Not specifically.

18 Q. If I understand your position correctly,
19 you are claiming that Mr. Manley's preclosing
20 representation that CBRE would either waive interest
21 or refund the interest reserve if it was depleted was
22 fraudulent; is that right?

1 A. I believe so.

2 Q. Are there any other preclosing
3 representations by CBRE that you claim were
4 fraudulent?

5 A. You know, without refreshing me, no, I
6 don't.

7 Q. Are there any other allegedly fraudulent
8 representations by CBRE that you relied upon when
9 entering into the loan documents for Pavilion?

10 A. You know, I think that was the issue that
11 we talked about, that was the focal issue in that
12 regard.

13 Q. So as you sit here today, you are not
14 aware of any facts related to any fraud prior to the
15 closing?

16 A. No more than I can recall.

17 (McCormick Exhibit No. 43 was
18 marked for identification.)

19 BY MS. QUINN-BARABANOV:

20 Q. So Mr. McCormick, we had a discussion
21 about whether November 8 was the closing day or
22 signing day of the loan agreement, but in any event,

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1 with the terms hereof and nothing in this section 6.3
2 is intended or shall be construed to excuse borrower
3 from making any such payment."

4 Q. So it is your understanding that the
5 written terms of the loan required Montrose to pay
6 current interest even if the interest rate ran out,
7 right?

8 A. That is my understanding, yes.

9 Q. Go to page 34. Section 16.14,
10 Integration, No Oral Change. Do you see that?

11 A. Yes, I do.

12 Q. Would you review that paragraph, please?

13 A. Okay.

14 Q. And so it was your understanding that the
15 terms of this loan agreement as written provided that
16 the written terms would supersede all prior oral
17 agreements to the parties, correct?

18 A. That's my understanding.

19 MR. BODOFF: Objection.

20 BY MS. QUINN-BARABANOV:

21 Q. And it's your understanding that the
22 written terms of this loan document also, as its

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1 written, prohibit any oral modifications of its
2 terms, right?

3 MR. BODOFF: Objection.

4 THE WITNESS: That is correct.

5 BY MS. QUINN-BARABANOV:

6 Q. Let's go to the guarantee document. What
7 exhibit is that?

8 MR. BODOFF: Number 9 is the guarantee.

9 (McCormick Exhibit No. 46 was
10 marked for identification.)

11 BY MS. QUINN-BARABANOV:

12 Q. Mr. McCormick, I'm showing you what has
13 been marked as Exhibit 46. Do you recognize this
14 document?

15 A. Yes.

16 Q. And is it a copy of the membership
17 interest pledge and security agreement in connection
18 with the Pavilion loan, correct?

19 A. That is correct.

20 Q. And does it appear to be a true and
21 complete copy of that Pledge and Security Agreement?

22 A. Yes, it does.

1 Q. Okay. Let me re-ask the question. That's
2 fair. Is it your understanding that the terms of
3 this pledge agreement as written to -- is it your
4 understanding that under the terms of this pledge
5 agreement as written, the written terms of the
6 agreement supersede any prior oral agreements between
7 the parties regarding the subject matter of the
8 Pavilion loan?

9 A. I am just reading, it says that, you know,
10 no other agreements will be effective unless executed
11 in writing, and I understood that.

12 Q. You also understood that this pledge
13 agreement could only be modified in writing; is that
14 right?

15 A. That is correct.

16 (McCormick Exhibit No. 47 was
17 marked for identification.)

18 BY MS. QUINN-BARABANOV:

19 Q. Mr. McCormick, I'm showing you what has
20 been marked as Exhibit 47. Do you recognize this
21 documented?

22 A. Yes, I do.

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1 A. Those were agreements that were made
2 between me and someone with authority or apparent
3 authority from CBRE.

4 Q. Anything else?

5 A. On a factual basis? I don't understand
6 any more of the question than that.

7 Q. As you sit here today, you are not aware
8 of any additional facts that would support your
9 position that pre-contractual promises by CBRE
10 concerning the interest reserve are binding?

11 A. Factually?

12 Q. Yes.

13 A. Not that I can think of.

14 Q. And you also made some representations
15 that CBRE made some post-closing -- well, let me ask
16 you this question. In some of your pleadings, you
17 suggested that CBRE made some post-closing
18 representations to provide additional funding for the
19 interest reserve. Is that your position?

20 A. I believe so.

21 Q. What is the factual basis for that
22 position?

1 A. I think some of the e-mails that we went
2 through, some of the discussions that I have had with
3 or had with CBRE, or Maury had with CBRE.

4 Q. And those were the discussions on or
5 around November 9, relating to the \$1.1 million
6 shortfall?

7 A. I believe so.

8 Q. Any other discussions?

9 A. With respect to --

10 Q. Refunding the interest reserve if it
11 became depleted after execution of the loan document?

12 A. You mean, did I have conversations after
13 the execution of the loan documents with them with
14 respect to that funding.

15 Q. Are you alleging that CBRE made any
16 representations after execution of the loan documents
17 that it would replenish the interest reserve or waive
18 current interest that you claim are binding?

19 A. I had conversations with Andrew Manley
20 subsequent to the closing. As we were moving through
21 the project, that we would certainly need that -- you
22 know, his promise to be honored. And as we moved

1 further into the project, we realized that we were
2 going to be delayed.

3 Q. Were there any additional promises of this
4 kind made after the closing documents were executed?

5 A. I don't know that there needed to be
6 additional promises. We had -- from my perspective,
7 they were conversations that I had with Andrew during
8 the ensuing months. We had already agreed on what
9 the -- you know, we had already made our agreement,
10 if you will, so we just talked about the necessity
11 for increasing interest reserve if we needed it.

12 Q. Some of the filings in this case have
13 suggested that you are claiming that CBRE made
14 promises about refunding the interest reserve or
15 waiving interest to you in your individual capacity.
16 And by that I mean you individually as opposed to you
17 as a representative of Triton or some Triton
18 affiliated entity. Is that your position?

19 A. I don't know that those --

20 MR. BODOFF: Object to the extent that it
21 is a legal position. To the extent that you wanted
22 to ask him whether --

1 McCormick. Do you recognize this document?

2 A. Yes.

3 Q. And this is a notice of default from
4 Fremont, correct?

5 A. It appears to be.

6 Q. Is it a true and complete copy of a
7 January 24, 2007 notice of default?

8 A. I believe so.

9 Q. Looking at the third paragraph, the notice
10 references three payments, November 1, 2006,
11 December 1, 2006, and January 1, 2007. Do you see
12 that?

13 A. I do.

14 Q. Is it true that as of January 24, 2007,
15 Triton Pavilion and these other entities had failed
16 to make these payments to Fremont?

17 MR. BODOFF: Objection. I'm sorry.

18 THE WITNESS: I believe that's correct.

19 MR. BODOFF: I withdraw that objection.

20 BY MS. QUINN-BARABANOV:

21 Q. Did Fremont have a security interest in
22 the Pavilion property?

1 A. They had a deed of trust.

2 Q. What was your understanding of what would
3 have happened to CBRE -- CBRE's ability to collect on
4 its loan if Fremont had foreclosed on that deed of
5 trust?

6 A. Their foreclosure would have foreclosed
7 out CBRE.

8 Q. So CBRE would not have been able to
9 recover on its loan, correct?

10 MR. BODOFF: Objection.

11 BY MS. QUINN-BARABANOV:

12 Q. Based on the -- let me rephrase that.

13 So CBRE would not have -- let me switch to
14 another question.

15 Did Fremont and CBRE, did there come a
16 time when Fremont and CBRE entered into a forbearance
17 agreement of some kind?

18 A. I don't recall.

19 Q. So you are not aware of any agreement
20 between Fremont and CBRE to forbear with respect to
21 the overdue amount?

22 A. With respect to Triton Pavilion or with

1 Fremont stop funding its loan?

2 A. Because their interest was in arrears.

3 Q. Did it also have anything to do with the
4 project being on or overbudget?

5 A. There was an out of balance that was
6 existing at that time as well.

7 Q. By out of balance, what do you mean in
8 this context?

9 A. Over budget, out of budget.

10 Q. So over budget?

11 A. It could be under or over, in this case,
12 it was over.

13 Q. Looking at the second sentence, "lender
14 has further confirmed that despite the prohibition on
15 the mechanics' and materialmen's liens, certain
16 mechanics' and materialmen's liens have been filed
17 with property." Is it true that as of April 27,
18 2007, there were mechanics' and material liens filed
19 with this property?

20 A. I believe so.

21 Q. Do you have any reason to dispute the
22 existence of the ten liens that are listed here?

1 paragraph.

2 BY MS. QUINN-BARABANOV:

3 Q. At the top of the paragraph, the first
4 item there that is listed is a failure to cause taxes
5 against any portion of the property to be timely
6 paid. You don't dispute that Montrose failed to make
7 timely payments of tax obligations, do you?

8 MR. BODOFF: Objection.

9 MS. QUINN-BARABANOV: What's the basis?

10 MR. BODOFF: Well, I mean, I think it's a
11 leading question. I think you could have just easily
12 asked, do you dispute, but it's leading.

13 THE WITNESS: I don't disagree with that.

14 BY MS. QUINN-BARABANOV:

15 Q. You acknowledge that Montrose failed to
16 pay certain taxes on time, correct?

17 A. That's correct.

18 Q. The third item, failure to obtain timely
19 completion free and clear of all mechanics' and
20 materialmen's liens. You agree that Montrose failed
21 to complete the project without incurring mechanics'
22 and materialmen's liens at the property, right?

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1 MR. BODOFF: Objection.

2 THE WITNESS: Do I answer that question?

3 MR. BODOFF: If you can.

4 THE WITNESS: I agree.

5 BY MS. QUINN-BARABANOV:

6 Q. And another reason listed is failure to
7 abate, clean up, remove or dispose of hazardous
8 substances on the property. Do you see that?

9 A. I do.

10 Q. And do you agree that Montrose failed to
11 abate, clean up, remove or dispose of hazardous
12 substances at the property?

13 A. I do dispute that.

14 Q. What is the basis for your disagreement
15 with that?

16 A. That during the course of construction,
17 any asbestos typically which was the environmental
18 condition out there that was found, was mitigated
19 properly. So I really do dispute that.

20 Q. So your understanding is that the only
21 hazardous substance that you are aware of that was at
22 issue for Pavilion was asbestos, is that right?

EXHIBIT B

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1 C.W. MOORE, III

2 for your MBA?

3 A. No.

4 Q. Did you graduate with honors from either
5 of those schools?

6 A. I'm pretty sure I graduated with honors
7 from both.

8 Q. You were never disciplined or expelled
9 from those schools since you graduated with honors.

10 A. No.

11 Q. Have you had any formal education since --

12 A. No.

13 Q. -- receiving your --

14 A. No.

15 Q. Have you had any training of any kind
16 relating to the commercial real estate industry?

17 A. No.

18 Q. Have you had any training of any kind
19 relating to evaluation of damages in real estate
20 cases?

21 A. No.

22 Q. Have you had any formal training with
23 respect to the valuation of real property?

24 A. No.

25 Q. Have you had any formal training with

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1 C.W. MOORE, III

2 respect to the valuation of business entities?

3 A. Yes.

4 Q. Can you describe that for me, please?

5 A. Well, at the University of Chicago --

6 Q. I'm sorry. Go ahead.

7 A. At the University of Chicago, we learned
8 how to value businesses. I also spent several years
9 working for two major investment banks, where
10 enterprise valuation was a central skill requirement.

11 Q. Let's talk a little bit about your
12 employment. You graduated, you said, in 1993 from
13 business school?

14 A. Yes.

15 Q. Can you walk me, briefly, through your
16 employment history since that time?

17 A. Yes. I worked, in 1993 and 1994, for
18 Morgan Stanley & Company. I worked from 1995, '96,
19 and the first half of '97, for a private equity firm
20 called Greenwich Street Capital Partners. I worked
21 from the latter half of 1997 through 2002 for UBS
22 Capital Americas, the private equity investment arm
23 of UBS AG.

24 I worked from 2002 through 2005 -- 2004,
25 rather, with Astron Services, which was a boutique

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1 C.W. MOORE, III

2 investment bank, and, subsequently, I have been
3 working for Jacobson Partners, which is a private
4 equity firm located in New York City, and I have been
5 employed by Jacobson Partners as a general partner
6 since that time.

7 Very recently, my role is changing to
8 chief financial officer of Formtech Industries, which
9 is a Michigan-based manufacturing company.

10 Q. I'm sorry. I --

11 A. F-O-R-M-T-E-C-H, Formtech Industries,
12 chief financial officer.

13 Q. You said your role is changing to CFO. Is
14 that on outgrowth of your work at Jacobson or is that
15 a new position?

16 A. It is an outgrowth. Jacobson is winding
17 down. Formtech Industries is a company that is owned
18 by Jacobson Partners, and so it's essentially a
19 portfolio company of the firm.

20 Q. Describe what that means to me.

21 A. It's a company that's approximately 60
22 percent owned by Jacobson Partners Fund IV, which was
23 a special purpose private equity fund that acquired
24 Formtech about three and a half years ago.

25 Q. It holds various investments?

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1 C.W. MOORE, III

2 A. Jacobson Partners Fund IV?

3 Q. Yes.

4 A. Is that the question? Jacobson Partners
5 Fund IV holds -- It currently holds two investments.
6 Formtech being one.

7 Q. And what is Formtech's business?

8 A. Automotive parts.

9 Q. Prior to working at Formtech, were your
10 job roles similar at each of your earlier jobs?

11 A. Yes.

12 Q. All of them were involved in private
13 equity deals of some sort?

14 A. They were. Back to Morgan Stanley, at
15 Morgan Stanley, it was more of a traditional
16 investment banking job.

17 Q. Approximately how many projects or how
18 many deals did you put together from '95 to the 2005
19 time period?

20 A. Maybe 15. That's an approximation.

21 Q. What was the value of those deals?

22 MR. BODOFF: Aggregate?

23 Q. In the aggregate.

24 MR. BODOFF: If you know.

25 A. In the aggregate, 750 to a billion

1 C.W. MOORE, III

2 dollars.

3 Q. As part of your private equity investing
4 experience, did you have occasion to negotiate loan
5 documents?

6 A. Yes.

7 Q. And did you have occasion to review loan
8 documents?

9 A. Yes.

10 Q. How many times would you say you've
11 negotiated commercial loan documents?

12 A. Between five and ten times.

13 Q. Did you have the assistance of counsel in
14 each of those transactions?

15 A. Yes.

16 Q. Overall, would you say you have at least
17 general familiarity with how loan documents are put
18 together?

19 A. I do now.

20 Q. You say you do now. Is there a point in
21 time when you did not?

22 A. Yes.

23 Q. And can you make the differentiation for
24 me?

25 A. In recent years, I've become much more

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1 C.W. MOORE, III

2 familiar with loan documentation as a result of
3 having defaulted under various loan agreements.

4 Q. What loan agreements are you referring to
5 when you say you defaulted under various loan
6 documents?

7 A. Principally, Formtech Industries and Tug
8 Manufacturing, both Jacobson Partners' portfolio
9 companies.

10 Q. Have you defaulted on any personal loan
11 documents?

12 A. Yes.

13 Q. When you were describing your employment
14 history, you didn't mention Triton Real Estate. Can
15 you describe your role with Triton Real Estate for
16 me?

17 MR. BODOFF: Is there a particular Triton
18 Real Estate entity or just generically?

19 Q. Triton Partners?

20 A. The holding company?

21 Q. The holding company.

22 A. The management company. As you're aware,
23 I was a member of Triton Real Estate partners and, as
24 you may know, not the managing member.

25 Substantially, all of the managerial control was

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1 C.W. MOORE, III

2 Q. And these are your responses to
3 plaintiff's interrogatories?

4 A. Yes.

5 Q. As we sit here today, is there anything
6 that you want to add to those responses?

7 A. No.

8 Q. Is there anything that you would like to
9 change?

10 A. No.

11 Q. Can you turn to Page 7 of your
12 interrogatory responses, please?

13 A. Yes.

14 Q. You state here that Mr. McCormick handled
15 the majority of negotiations and discussions relative
16 to this dispute. Can you explain for me, please,
17 whether you had any direct contact with
18 representatives of plaintiffs in connection with
19 negotiations of either the Montrose or Rodgers Forge
20 notes?

21 A. I had no direct communication with anybody
22 from CBRE Realty Finance.

23 Q. Just to make it easy through the course of
24 the deposition, if I refer to CBRE or you refer to
25 CBRE or RFC, we'll be referring to the plaintiff in

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2 the negotiations of the Montrose loan in November of
3 2005.

4 A. I cannot remember a single material deal
5 point as it relates to that -- that negotiation. I
6 was not involved.

7 Q. Did you have personal money invested in
8 Triton in November of 2005?

9 A. Yes.

10 Q. Do you recall how much of your own assets
11 were invested in Triton in November of 2005?

12 A. No.

13 Q. Is it fair to say it was a substantial
14 amount of money?

15 MR. BODOFF: Let me just object. Answer
16 if you know what "substantial" is. It's a matter of
17 opinion.

18 A. Look, I don't recall. We had funded a
19 project prior to this project called the Spa Cove
20 project, where I had made an investment, which I
21 considered material.

22 Q. Is it fair to say that you were relying
23 then, very heavily, on Mr. McCormick, as far as
24 negotiating the Montrose loan?

25 MR. BODOFF: Objection. You can answer.

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2 A. Yes.

3 MR. CALHOUN: Can you give me the basis of
4 objection, please?

5 MR. BODOFF: Form of the question.

6 Q. Who did you rely on in negotiating the
7 Montrose loan?

8 A. Brian McCormick.

9 Q. Sorry. I have to ask that again, but I
10 had to have a useable answer.

11 If you turn to Page 10 of your
12 interrogatory responses, please, with respect to the
13 first full paragraph of that page, that paragraph
14 deals with Rodgers Forge. Correct?

15 A. Yes.

16 Q. Are your answers regarding the source of
17 your knowledge with respect to that answer the same
18 as the ones that you gave earlier with respect to the
19 Montrose project?

20 MR. BODOFF: Objection.

21 If you understand the question, you can
22 answer it.

23 A. To the extent I was relying principally on
24 Brian McCormick. Yes.

25 Q. Did you have personal knowledge that Ohio

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2 Savings Bank had not threatened a default under its
3 loan documents at the time Triton defaulted on the
4 mezzanine documents?

5 MR. BODOFF: Objection. You can answer.

6 A. Can you ask that question again?

7 Q. In your interrogatory response, you say,
8 "At the time of the default, Triton was not
9 delinquent on its payments to CBRE and Ohio Savings
10 Bank and had not threatened a default under its loan
11 documents."

12 Is that statement based on your personal
13 knowledge?

14 A. No. That is based on information provided
15 to me -- you know, through Brian McCormick.

16 Q. And, the sentence before that, you claim
17 that, "CBRE improperly declared a default under the
18 Rodgers Forge loan documents due to a perceived
19 technical default by Triton Rodgers Forge, LLC, with
20 a senior lender at Ohio Savings Bank."

21 Is that statement based on personal
22 knowledge?

23 A. It falls into the same category.

24 Q. That it's based on your conversations with
25 Mr. McCormick?

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2 MR. CALHOUN: I'll ask it another way.

3 Q. By you, not your business entities, did
4 you, Charles Moore, have an agreement with CBRE
5 concerning the interest reserve on the Montrose
6 project?

7 MR. BODOFF: Objection.

8 You can answer if you understand the
9 question.

10 A. No.

11 Q. Did you have any knowledge in November of
12 2005 of any agreement between Triton or any Triton
13 affiliate and CBRE concerning the interest reserve on
14 the Montrose project?

15 A. I do not have a recollection of a direct
16 involvement as it relates to that whole issue.

17 Q. Turn your attention to Interrogatory
18 Number 8, please. It's on Page 11.

19 Is it fair to say that this answer is also
20 based on your conversations with Mr. McCormick and
21 not based on personal knowledge?

22 A. Yes.

23 (Whereupon, Exhibit 4 is marked for
24 identification by the reporter.)

25 Q. Mr. Moore, I'm handing you a document I've

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2 MR. BODOFF: Objection.

3 A. I would say that, with respect to the
4 amended and restated Rodgers Forge document, I am not
5 sure that I ever reviewed that document.

6 Q. Are you more certain that you reviewed the
7 loan agreement in connection with the original
8 Rodgers Forge loan?

9 A. Yes.

10 Q. Let me back up a little bit.

11 Are you today, generally, familiar with
12 the structures of the Montrose and Rodgers Forge
13 mezzanine loans?

14 A. Elaborate on "structure."

15 Q. The general terms of those agreements.

16 A. I have a limited knowledge of the terms.

17 Q. You were involved in the modeling of the
18 Rodgers Forge and Montrose projects. Correct?

19 A. Yes.

20 Q. And, when you do your models either by
21 yourself or with the assistance of Mr. Waldman, one
22 of your inputs is -- When you put together your
23 models, you have to use the terms of the loans to
24 structure part of those models. Correct?

25 A. Correct.

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2 earlier model. Correct?

3 A. Yes.

4 Q. And this model shows, if I understand it
5 correctly, sales income beginning in May, 2006.

6 Correct?

7 A. Yes.

8 Q. And that's income that would be coming in
9 from sales of condominiums and deliveries of those
10 condominiums. Correct?

11 A. Yes.

12 Q. If you look down at total cash interest
13 expense, it has a similar pattern of cash interest
14 expense listed for November, 05, to March, '06. Do
15 you see that?

16 A. Yes.

17 Q. And then it has no cash interest expense
18 beginning in April, '06, and continuing on from
19 there. Correct?

20 A. Correct.

21 Q. Again, you show excess cash becoming a
22 positive number in August, '06. Correct?

23 A. That's what the model shows.

24 Q. Without regard to whether mezzanine debt
25 was being paid, interest was being paid on a current

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2 basis, this model would show, beginning in August of
3 '06, cash in excess of a million dollars per month
4 that could be used to pay debt or anything else.

5 Correct? Beginning in August, '06.

6 A. Yes.

7 Q. You show sales income ending in March,
8 '07. Does that mean that this model contemplates a
9 cleat sellout by March of '07?

10 A. It does, unless certain units were being
11 held back for some reason.

12 Q. There might be a lifetime tenancy or
13 something like that?

14 A. Exactly. An example.

15 Q. If there was a lifetime tenancy in that
16 sale or construction lapped down the road, it
17 wouldn't be in this model if -- if it is -- it's
18 contemplated it would be sold by the March 7th
19 timeframe.

20 A. I think that's the case. I don't recall
21 if they were making offers to lifetime tenants to buy
22 them out and get them out of the units and then take
23 their units and resell them.

24 Q. If you look through the model several
25 pages you get to MO3415, which is, basically, if I

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2 A. No.

3 MR. BODOFF: Based on what? Scheduled --
4 I don't think is the right word because it's not like
5 there was a -- I don't know that there's a
6 schedule -- and it's from what timeframe are you
7 talking about?

8 Q. Assuming that the borrower drew on
9 interest reserve every month for the full amount of
10 the current interest payable on the Montrose project,
11 do you know when that interest reserve would have
12 exhausted?

13 A. No.

14 Q. If that date were after May, 2006, would
15 it have been your expectation that sales income would
16 be available to then pay the current interest?

17 A. It is my understanding that that's the way
18 this project was put together.

19 Q. So, when you were looking at the models or
20 otherwise contemplating the project, the plan was to
21 have sales income kick in and carry the debt service
22 obligations.

23 A. To begin paying down the debt and meeting
24 the obligations.

25 Q. So --

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2 A. Although we did have rental income as
3 well.

4 Q. That's correct; and you can see that in
5 the model. In fact, it's the first line.

6 A. Yes. Exactly.

7 Q. That number goes negative beginning in
8 April of '06. Do you know why that happens?

9 A. I don't. I don't know why that would go
10 negative.

11 Q. Does that represent empty apartments?

12 A. Honestly, I don't know. I don't know.
13 Probably a modeling error.

14 Q. Your counsel, at one point, said that it
15 was entirely incorrect to say that they -- meaning my
16 client, I believe -- could have ever, ever expected
17 that there would be any money coming into this
18 project prior to the date that the interest reserve
19 ran out. It just isn't true.

20 That statement's not correct. Is it?

21 MR. BODOFF: Objection.

22 A. It's hard for me to give an opinion, if
23 Joe made that statement, really, what he was
24 referring to. I can give you an opinion based on
25 this financial model by looking at it -- you know,

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2 I --

3 Q. I don't want your opinion because you're
4 here as a fact witness, but the fact is, as I think
5 you said earlier, that you anticipated sales would
6 begin, and those proceeds would be used to pay the
7 debt obligations.

8 A. Correct.

9 Q. Now, are you familiar with what happened
10 on the Montrose project after the loans closed?

11 A. I would have a very difficult time
12 recanting for you actually what happened, as it
13 happened in terms of sellout proceeds being applied
14 to loans, to interest escrow availability to -- you
15 know, I would have a difficult time with that.

16 Q. Do you recall whether or not the project
17 proceeded on the anticipated schedule?

18 A. I believe there were delays in the
19 project, but that the project did proceed, but, in
20 terms of the details of exactly how it unfolded, I'm
21 not going to be particularly helpful.

22 Q. Okay. Do you know whether Triton or its
23 subsidiaries made any changes to the construction
24 plans with respect to the Montrose property?

25 A. Changes from -- I mean, from the

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2 originally --

3 Q. No. From the model at or about the time
4 of closing to how it was actually performed.

5 A. I believe the changes were made, but I
6 don't know specifically what the changes were, the
7 scope of the dollars involved.

8 Q. Would it refresh your recollection if I
9 told you that there were changes made to the kitchen
10 layout?

11 A. It doesn't specifically ring any bells,
12 but it doesn't surprise me either.

13 Q. Do you recall any discussions concerning
14 asbestos abatement with respect to the Montrose
15 property?

16 A. I don't recall back when this project got
17 kicked off discussions about asbestos, but I did come
18 to learn that the building had asbestos.

19 Q. Do you know what, if any, impact the
20 delays had on the models that had been prepared with
21 respect to the project?

22 A. We'd have to look at those models, but one
23 can imagine that --

24 MR. BODOFF: Don't speculate. The
25 question was: Do you know?

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2 A. Do I know? I don't know, with any
3 specificity, other than project -- that delays in the
4 project would have resulted in -- in delays in
5 construction and then, ultimately, delays in unit
6 sales.

7 Q. That makes perfect sense. If you don't
8 start as soon, you don't finish as soon.

9 Do you know whether, in fact, sales volume
10 was as great as anticipated?

11 A. I don't.

12 Q. I believe the models anticipated 40 units
13 per month. Correct?

14 A. In these. Yes.

15 Q. Do you know whether, in fact, you were
16 able to achieve 40 units per month?

17 A. I mean, ultimately, I know that we were
18 unable to achieve 40 per month. Initially, I don't
19 know -- you know, the rate of sale, nor the sellout
20 price per unit.

21 Q. Did you have any discussions with
22 Mr. McCormick or anybody else at Triton about either
23 the delays in construction or the sellout process?

24 A. I'm sure that I did, but I can't recollect
25 for you any specific discussions.

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2 A. As I understand it, funding under a
3 construction loan was meant to stay within a
4 parameter, and so, in the event it got out of
5 balance, that's what created the funding balance. In
6 other words, funding under the construction loan
7 without, ultimately, some disposition of units to pay
8 down the construction loan, that would be one way to
9 create an out-of-balance.

10 Q. And if an out-of-balance situation were
11 created, what was supposed to happen?

12 A. I'm not entirely sure what the
13 construction loan said, as it relates to that, but
14 I'm confident the objective was to get it back into
15 balance as quickly as possible or run the risk of
16 having construction funding halt.

17 Q. Would it be fair to say that the
18 out-of-balance provisions were designed match funds
19 to the pace of progress on a construction?

20 A. I believe that was the case.

21 Q. So, if there were delays on the
22 construction, that would be something that might lead
23 to an out-of-balance problem?

24 A. Yes.

25 Q. And you understand, in fact, there were

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2 some out-of-balance issues on the Montrose project.

3 Correct?

4 A. That's correct, although I couldn't tell
5 you the timing or the amount.

6 Q. I can help you with that.

7 A. I bet you can.

8 (Whereupon, Exhibit 35 is marked for
9 identification by the reporter.)

10 Q. I've handed you Exhibit Number 35. It
11 purports to be a letter from Fremont to Triton
12 Pavilion and, in fact, if you turn to the last page,
13 is that your signature there?

14 A. I'm not sure.

15 Q. You're not sure if that's your signature?

16 A. No.

17 Q. You think someone may have signed it on
18 your behalf?

19 A. Yes.

20 Q. Have you authorized anyone to sign it on
21 your behalf?

22 A. No.

23 Q. Do you recall having seen this document
24 before?

25 A. I do not recall.

EXHIBIT C

1 some of this stuff is things you do continually
2 throughout a job. So I mean I'm not going say we
3 were done with the cost to complete because the
4 cost to complete we would continually update as we
5 renegotiated with subs, figure out we could use
6 some, couldn't use some, determine what their
7 requirements were to come back. In our eyes we
8 had completed the first scope of work for them,
9 given them product and may or may not do
10 additional work, similar work.

11 Q. Would it be fair to say that from
12 May 4th when you made your, that formal proposal
13 and the middle of May when you started working on
14 it, that you were essentially in a hiatus?

15 A. Yes.

16 Q. What did you do between mid-May when CBF
17 engaged you under that proposal and June 13th?

18 A. From about mid-May through the first few
19 days of June we were looking at the existing lien
20 suits that had been filed and were in the process
21 of trying to make contact with these contractors

1 to determine what the components of the lien was
2 so we could start getting some ideas to what the
3 existing liability was to them or what -- what the
4 existing liability was in say the owner's eyes and
5 any other claims for damages or something they may
6 have had.

7 In early June that scope of work,
8 kind of a little piece of work we kind of got
9 hired under this proposal to perform other
10 additional work associated with the project. At
11 that point in time is when we started to basically
12 get in contact with these subs to bring them in
13 for these meetings to discuss the status of their
14 contract, outstanding liabilities and what it
15 would take to basically remobilize.

16 Q. Are you saying that when CBF engaged you
17 they engaged you in phases?

18 MR. CALHOUN: Objection.

19 Q. If you don't understand the question I can
20 rephrase it.

21 A. You know, I guess it's...

1 you were doing some gathering of information
2 relating to the liens?

3 A. Lien filings that contractors had filed.

4 Q. How did that change starting in the
5 beginning of June?

6 A. We went from the position of gathering
7 information for what you might consider a limited
8 scope related to what all the contractor had going
9 on, I mean, you know, every contractor has a
10 different motivation when they file a lien. Some
11 may have filed it with a very conservative claim
12 as to what they were claiming, others may have
13 thrown in the kitchen sink, they were damaged up
14 the kazoo. The preliminary assessment is what is
15 in the claims and what do we need to do to respond
16 to them to minimize any exposure we have.

17 The one thing we did not want to
18 occur was to have a lien perfected at some
19 inflated amount. So it was preliminarily looking
20 at them and figuring out what's in the claims. As
21 we got hired as you said under the fourth letter

1 it was now figuring out is this the right contract
2 or what do we owe them legally and what is it
3 going to take to get them back to finish the work.
4 And at some point in time making the assessment as
5 to whether or not from a cost benefit standpoint
6 that would be the right approach.

7 Typically it's the best approach to
8 keep an existing guy on because the cost of
9 bringing another guy on, but every situation is
10 different. You have to assess it and make a
11 decision accordingly.

12 Q. Would you say this June 13th e-mail is I
13 guess an early assessment?

14 A. It's one of our first assessments having
15 gone through a number of meetings with the subs,
16 getting a feel what their position was, starting to
17 find out as we talked about a little bit earlier
18 the fact that there was a lot of work out there
19 that was on unapproved change orders that needed
20 to be resolved and executed if in fact, you know,
21 was work performed and what needed to be done.

1 projected totals?

2 A. I believe it's an accumulation of all the
3 numbers above it but some of those numbers were
4 added to, I believe, because it didn't tie to the
5 original project. I don't know if this schedule
6 totaled down and was totaling individual lines and
7 then the subtotal, or if this original budget
8 really isn't used the same by Triton as the
9 original budget was by the underwriter.

10 Q. Let's go back to Exhibit 14. Who
11 calculated the revised budget?

12 A. Basically Delta did, I mean through our
13 meetings with the developer, any meetings we may
14 have had up to that point in time, the analysis of
15 the documents that we had received initially and
16 subsequently. This was the budgeted estimate at
17 that point in time.

18 Q. And had you estimated, I think if I see
19 here it would cost another 10,207,966 to complete
20 over and above the original budget?

21 A. Correct.

1 Q. And that when you say estimate to complete
2 35,232,744; am I reading that correctly?

3 A. Is there a question in there?

4 Q. Am I reading that correctly the funds
5 required to complete were 35,232,744?

6 A. Yes.

7 Q. It would be an actual cash outlay?

8 A. That's the correct way to look at it
9 because the actual work to be performed was less,
10 but there was, as we saw in some of the other
11 schedules, outstanding liabilities.

12 Q. I see you're showing 7 million 750 in cash
13 liabilities.

14 (Brief pause in the proceedings.)

15 BY MR. BODOFF:

16 Q. Still on Exhibit Number 14 does this
17 \$35 million take into account any, estimated cost
18 to complete take into account any revenues that
19 might be received from the project?

20 A. As offsets, no.

21 Q. Did you ever undertake that analysis of